

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>ANGELA LOWE,</b>	)	<b>CASE NO. 1:08 CV 1339</b>
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>JUDGE DONALD C. NUGENT</b>
	)	
	)	<b>Magistrate Judge Greg White</b>
	)	
<b>CUYAHOGA COUNTY/BOARD OF COMMISSIONERS, et al.,</b>	)	<b>MEMORANDUM OPINION</b>
	)	<b><u>AND ORDER</u></b>
	)	
<b>Respondent.</b>	)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Greg White (Docket #229) recommending that the Court deny the Motion for Reconsideration (Docket #s 211, 224) filed by Third Party Defendant, State Automobile Insurance Company ("State Auto").

The factual and procedural history of this case, as set forth by the Magistrate Judge, is as follows:

**I. Procedural Background**

This matter began as a wrongful death action by Plaintiff Angela Lowe, individually and as administratrix of the estate of her late husband, Sean Levert, who died while in custody at the Cuyahoga County jail. (ECF No. 99.) The Fourth Amended Complaint, filed on April 7, 2010, specifically alleged the following causes of action: a deprivation of decedent's rights

pursuant to 42 U.S.C. §1983; wrongful death under Ohio law; malpractice against physicians and nurses of the Cuyahoga County Jail; negligence against Defendants Midwest Medical Staffing and Dr. Emmanuel Tuffuor; negligence against Defendants Cuyahoga County, Sheriff Gerald McFaul, Kenneth Kochevar, and Christine Dubber; and, loss of consortium. Id.

On May 21, 2010, Defendant Cuyahoga County (hereafter “the County”) filed crossclaims against Defendant Midwest Medical Staffing (hereafter “MMS”) alleging common law indemnity or contribution and breach of contract. (ECF No. 118.) The County also filed a third party complaint against State Auto asserting that the County is entitled to defense and indemnity under a liability policy issued to MMS by State Auto. Id.

On June 16, 2010, after mediation, the parties reached a contingent settlement disposing of all claims except the County’s claim against State Auto.<sup>1</sup> (ECF No. 141.) Jonathan Mount attended the mediation as a representative of State Auto. (ECF No. 141-1.)

On October 18, 2010, State Auto filed a Motion for Summary Judgment. (ECF No. 163.) The County and related Defendants filed a Motion for Summary Judgment as to coverage issues on November 15, 2010. (ECF No. 165.) On December 9, 2010, District Court Judge Nugent denied State Auto’s Motion for Summary Judgment. (ECF No. 167.) On December 20, 2010, State Auto filed a brief in opposition to the County’s motion and a Cross-Motion for Summary Judgment. (ECF No. 172.) The County filed a brief in support of its motion and opposing State Auto’s cross-motion on December 20, 2010. (ECF No. 173.) On February 9, 2011, Judge Nugent granted the County’s motion for summary judgment while denying State Auto’s crossmotion. (ECF Nos. 178-79.)

On February 23, 2011, State Auto filed a Motion to Amend Judgment, followed by a Motion for Reconsideration and Motion to Alter/Amend Judgment on March 7, 2011. (ECF Nos. 180, 181.) On March 31, 2011, Judge Nugent denied all of State Auto’s motions. (ECF No. 185.)

Four and one-half months later, State Auto filed a second Motion for Reconsideration. (ECF No. 211.) That motion, now fully briefed, is before the Court. (ECF Nos. 214, 215.)

Magistrate Judge’s Report and Recommendation (Docket #229) at pp. 1-2 (footnote omitted).

After a thorough review and detailed analysis of the issues presented, the Magistrate Judge recommended that State Auto's Motion for Reconsideration be denied. On December 21, 2011, State Auto filed its Objections to Magistrate Judge Greg White's Report and Recommendation, in large part reiterating the arguments and analysis included in its Second Motion for Reconsideration and Reply Brief. (Docket #230.) On January 4, 2012, Cuyahoga County filed its Response to State Auto's Objections. (Docket #231.)

#### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

#### **Discussion**

The Court has reviewed the Report and Recommendation *de novo*, as well as the Objections filed by State Auto and Cuyahoga County's Response thereto. The Court hereby agrees with, and adopts, the findings and conclusions of the Magistrate Judge as its own. The Magistrate Judge thoroughly and accurately addressed the issues presented by State Auto in its Motion for Reconsideration and analyzed, in detail, the facts presented by State Auto in conjunction with the applicable Federal Rules, Statutes and case law. The Court accepts Magistrate Judge White's recommendation that State Auto's Motion for Reconsideration be denied.

### Conclusion

The Report and Recommendation issued by Magistrate Judge Greg White on December 8, 2011 (Docket #229) is hereby ADOPTED. For the reasons stated in the Report and Recommendation, State Auto's Motion for Reconsideration (Docket #s 211 and 224) is DENIED.

As previously indicated, a trial in this matter is set for January 19, 2012. Trial will begin at 8:30 a.m. in Courtroom 17B.

IT IS SO ORDERED.

  
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DONALD C. NUGENT  
United States District Judge

DATED: 